

HOUSE BILL 834  
By Hood

AN ACT to amend Tennessee Code Annotated, Title 13,  
relative to the authorization of impact fees for local  
governments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, is amended by adding the following  
as a new chapter:

Section 13-30-101. This chapter shall be known and cited as the "Tennessee  
Governmental Entity Construction Impact Fee Act".

Section 13-30-102. As used in this chapter, unless a different meaning clearly  
appears from the context:

(1) "Capital or public improvements" means the construction,  
reconstruction, building, replacement, extension, enlargement, or repair of any  
street, alley, sidewalk, gutter, and or similar improvements; schools; parks and  
playgrounds; waterworks, water distribution systems, sewers, sewerage, storm  
water or drainage system authorized by the governing body of any governmental  
entity; and includes any one (1) or more or any combination of these public  
improvements.

(2) "Developer" means the person, corporation, partnership, or other  
entity responsible for any new land development.

(3) "Governing body" means the county legislative body of a county or  
the municipal legislative body of a municipality or governing body of a  
metropolitan government.

(4) "Governing entity" means any incorporated municipality, county or metropolitan government.

Section 13-30-103. It is the intent and purpose of this chapter to grant to governing entities the authority to establish a regulatory procedure or system to collect fees from the developer of any new land development activity so as to require the developer to share in the burdens of growth by paying a pro rata share for the reasonably anticipated expansion cost of public improvements generated by the new land development activity. Governing entities may not assess, impose, levy, or collect a impact fee unless the governing entity has adopted a capital improvements plan for the construction of public facilities indicating the need for the cost of public facilities anticipated to be funded, in part, by this fee and after finding that the need for the public facilities is reasonably related to the new development in the county or municipality.

Section 13-30-104. Any governmental entity may perform or order the construction, reconstruction, building, replacing, extending, enlarging or order the construction, reconstruction, building, replacing, extending, enlarging or repairing of any capital or public improvement and provide for the payment of the cost of any such public improvements by levying and collecting an impact fee on new land development.

Section 13-30-305. When the governing body of any governing entity determines to make any public improvement authorized by this chapter and defray the expense thereof by an impact fee, the governing body shall adopt an ordinance in the case of municipalities and metropolitan governments or a resolution in the case of counties to so declare by stating the nature of the proposed public improvement. The ordinance or resolution shall establish the portion of expense, thereof to be paid by the impact fee, the manner in which the impact fee shall be made, and when the impact fees are to be paid. The governing body shall establish an impact fee formula that requires the developer to

pay an impact fee that does not exceed a pro rata share of the reasonably anticipated cost for the public improvements created by the new land development activity.

Section 13-30-106.

(a) An impact fee must meet the following standards:

(1) The cost of public facilities for which a impact fee may be assessed, imposed, levied or collected, must be reasonably attributable or reasonably related to the service demands of the new growth and development;

(2) Impact fees assessed, imposed, levied or collected from new growth and development must not exceed a proportionate share of the costs incurred or to be incurred by the governing entity in providing public facilities to new growth and development; and

(3) Impact fees shall be used and expended to the benefit of the new growth and development that pays the impact fee. In order to satisfy this requirement, the implementing ordinance or resolution must specifically contain the following provisions:

(A) Upon collection, impact fees must be deposited in a trust fund that clearly identifies the type of public facility for which the fee was imposed, and impact fees must be invested with interest accruing to the trust fund.

(B) Except for recoupment provided in subsection (b), impact fees may not be collected from a developer until public facilities, which bear a reasonable relationship to the needs created by the development, are included in at least a five (5) year

local government capital improvements budget as required by this chapter.

(C) Impact fees collected must be used for the construction of public facilities within five (5) years after the date of collection.

(D) If the impact fees are not used within five (5) years after the date of collection, a governing entity shall refund the amount of the impact fee along with accrued interest on the amount of the fee at the average annual rate of interest earned by the trust fund during the five (5) year period on which the fee was paid. For purposes of refunds, the owner on which a impact fee was paid is the owner of record at the time that the refund is paid. The owner of the property on which an impact fee has been paid has standing to sue for a refund under the provisions of this chapter; however such an action must be commenced within one (1) year after the date the refund becomes due and payable.

(b) A governing entity may recoup through an impact fee the costs of excess capacity in existing public facilities to the extent new growth and development is served by the existing public facilities.

(c) A governing entity shall exempt from impact fee programs all new growth and development that constitutes affordable housing for low income households as defined by the United States department of housing and urban development.

(d) A governing entity may exempt from impact fee programs particular types and locations of new growth and development that are determined by to

serve an overriding public interest, provided that such exemptions are specified in the implementing ordinance or resolution.

Section 13-30-107. The governing body shall provide a schedule and method for the payment of the fees in a manner appropriate to the particular circumstances of the proposed new development. The ordinance or resolution may not require the payment of an impact before a building permit is issued. The governing body shall require security ensuring payment of the fees subsequent to the issuance of a building permit. The security may be in the form of a cash bond, security bond, an irrevocable letter of credit, or a lien or mortgage on the lands to be covered by the building permit.

Section 13-30-108. The provisions of this chapter shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law. This chapter shall be deemed to create an additional and alternative method for counties and municipalities to impose and collect taxes for the purpose of providing public facilities within the county.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.